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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

RICHARD BEGG,

Petitioner,

vs.

BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF PARK RIDGE, ILLINOIS, and the CITY OF PARK RIDGE, ILLINOIS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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QUESTION PRESENTED FOR REVIEW

Does a traffic ticket quota system violate the Fourteenth Amendment due process clause in that it subjects innocent motorists to the issuance of traffic citations without probable cause?

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW ... i

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 5

CONSTITUTIONAL PROVISIONS INVOLVED 6

STATEMENT OF THE CASE 7

REASONS FOR GRANTING THE WRIT:

A TRAFFIC TICKET QUOTA SYSTEM VIOLATES THE FOURTEENTH AMENDMENT DUE PROCESS CLAUSE IN THAT IT SUBJECTS INNOCENT MOTORISTS TO THE ISSUANCE OF TRAFFIC CITATIONS WITHOUT PROBABLE CAUSE 9

CONCLUSION 14

APPENDIX

A—Order of the Circuit Court of Cook County, Illinois 1a

B—Opinion of the Appellate Court of Illinois, First District 2a

C—Opinion of the Supreme Court of Illinois .. 10a

TABLE OF AUTHORITIES

Cases

Collins v. Board of Fire and Police Commissioners, 84 Ill.App.3d 516 (1980) 11
People v. Patterson, 88 Ill.App.3d 144 (1980) .. 11

Constitutional Provisions and Statutes Involved

U.S. Constitution, Fifth Amendment 6
U.S. Constitution, Fourteenth Amendment 6
Illinois Revised Statutes, Chap. 24, Sec. 2.1-17 (1980) 7
Pennsylvania Statute, No. 1981-114 ..... 10, 11

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OPINIONS BELOW

On November 23, 1981, the Honorable James C. Murray entered an order that the decision of the City of Park Ridge, Illinois, Fire and Police Commission suspending the petitioner for three days for refusing to meet a traffic ticket quota was to be reversed, since it was against public policy (the order of the Honorable James C. Murray is reprinted herein as Appendix A).

On November 24, 1982, the Illinois Appellate Court reversed the decision of the Honorable James C. Murray by holding that requiring the petitioner to write .80 traffic

tickets per day was an administrative rule or regulation that was presumptively valid and therefore not arbitrary and capricious, since the petitioner had not met the burden of proving it arbitrary and capricious (decision is reprinted herein as Appendix B).

However, the concurring opinion of the Illinois Appellate Court stated that:

> Although I agree in general that the "arbitrary" and "unreasonable" test is appropriate for cases involving the validity of administrative regulations, when a regulation requires a police officer to charge members of the public with a certain number of quasi-criminal infractions per day, far more serious questions are raised. It is no longer simply a question of whether the statute is arbitrary and unreasonable. For example, if it could be shown statistically that an increased issuance of traffic tickets reduces traffic accidents, then the quota system would arguably survive the arbitrary and unreasonable test applied by the majority to the quota system in this case. Nonetheless, if a police officer, to keep his job, to get promoted and/or to gain favor with his superiors, issues traffic tickets to innocent people, serious public policy concerns arise.

At the administrative hearing of the petitioner, the testimony of the Park Ridge police officers, supports the expressed fears of the concurring opinion concerning the traffic ticket quota system impinging upon the due process rights of innocent motorists, which testimony is quoted as follows:

> Direct Examination of William Vallas.
>
> Q. What does the Traffic Index mean here in terms of the amount of tickets or traffic citations that should be issued per day?

A. Say it's a quota system.
Q. Why would you say it's a quota system?
A. Our supervisor seems to be very concerned about how many tickets we write. If you're short in a month, they'll tell you you have to write more tickets to be even with the month and so forth.
Q. Do you feel that this is a compulsory requirement to write .80 tickets per day?
A. Yes, I do.

Direct Examination of Paul Polk.

Q. Now, in terms of what you call a Traffic Index, what does that mean to you as is required here?
A. Quota.
Q. Why do you say it's a quota?
A. It's a mandatory amount that I'm required to write every month, specified amount.
MR. JAKALA: For the record, I'm going to identify these officers. Will you please identify yourselves by name?
MR. WILLIAMS: Officer David J. Williams.
MR. DEL FOSSE: Officer Gerald Del Fosse.
MR. JAKALA: If these men were to testify, they would testify as to the issue that the—that this is a quota system. They would testify to the issue that the non-traffic citation greatest volume activity is the vacant home inspections.

Direct Examination of Richard Begg.

Q. Now, Officer Begg, in connection with part one, how many tickets per day is each officer required to write in this department.
A. Point eight.
Q. Now, this particular system is identified as a traffic index. Do you have another term for it in your opinion?
A. Quota.

Furthermore, the cross-examination of Lieutenant George Teune (one of the chief witnesses for the prosecution) certainly reinforces the testimony of the other Park Ridge, Illinois police officers as stated herein when Lieutenant Teune testified that:

> Cross-Examination of Lieutenant George Teune.
>
> Q. We're going to try to conclude now, Lieutenant. We're going to do it in a certain way if I may. One, .80 per day traffic citation, is that called a Traffic Index?
>
> A. I've heard it referred to as that, yes.
>
> Q. Would you believe—is that the proper way to describe it?
>
> A. I would think that if I was to describe it, that's the way I would describe it, yes, sir.
>
> Q. All right. Could you describe a quota system to me in terms of issuance of tickets per day?
>
> A. A quota system, in essence, has a negative connotation.
>
> Q. Besides a negative connotation?
>
> A. Quota system would be a required performance level, the activity that a person was hired to do for a specific period of time. A measure of quantitative and qualitative activity of a—in this case, a particular police officer as it pertained to traffic law enforcement.
>
> Q. Required to do. Okay. Point 80 per day, isn't that a requirement that a police officer must do?
>
> A. In my opinion, yes.
>
> Q. Is that any different than a quota?
>
> A. According—by your definition, no.
>
> Q. I don't know if we differ in definitions, but—
>
> A. I don't think, no.
>
> Q. You don't think we differ in definitions? Thank you.

Because the petitioner had been suspended for three days as punishment for failure to meet the traffic quota system, the concurring opinion's observation that traffic

quotas raise serious public policy concerns when they are related to a police officer "keeping his job" is well taken.

On January 20, 1984, the Illinois Supreme Court affirmed the decision of the Illinois Appellate Court, that requiring the writing of .80 traffic tickets per day was not arbitrary nor capricious, but did not specifically address the issue raised by the concurring opinion; namely, that a traffic quota system, as an administrative rule or regulation, that is presumptively valid, nevertheless violates the public interest when the issuance of traffic citations to innocent motorists is not based upon probable cause (the decision by the Illinois Supreme Court is reprinted herein as Appendix C).

JURISDICTION

1. The federal question was raised in the administrative hearing before the City of Park Ridge, Illinois Fire and Police Commission, was raised in the Complaint for Administrative Review filed in the Circuit Court of Cook County, Illinois, and heard by the Honorable James C. Murray, was raised in the Appellate Court, and considered by the concurring opinion, and was raised in the Illinois Supreme Court, relating to the issue that a traffic quota system requiring the writing of .80 traffic tickets per day violates the Fourteenth Amendment by subjecting innocent motorists to the issuance of unwarranted tickets thereby violating the public interest.

2. That the petition for Writ of Certiorari was filed within ninety days after the entry of the judgment by the Illinois Supreme Court on January 20, 1984.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

That the Petitioner was employed as a City of Park Ridge, Illinois police officer having the status of a patrolman prior to August 15, 1980.

That, on August 15, 1980, the Director of Public Safety of the City of Park Ridge, Illinois, G. Joe Moffitt, suspended the Petitioner for three days without pay for allegedly violating certain performance standards applicable to patrol officers of the City of Park Ridge, Illinois, Police Department.

That the suspension order of August 15, 1980, pertained to the Petitioner's alleged failure to issue traffic citations equivalent to .80 per day.

The Petitioner appealed the three-day suspension to the City of Park Ridge, Illinois, Fire and Police Commission pursuant to *Illinois Revised Statutes*, Chap. 24, Sec. 2.1-17 (1980), which provides for such appeals.

At the Fire and Police Commission hearing of the City of Park Ridge, Illinois, the Petitioner had filed a Motion to Dismiss the three-day suspension in that the requiring of the Petitioner to issue traffic citations of .80 per day constituted a traffic quota system contrary to public policy and was in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

The Board of Fire and Police Commissioners of the City of Park Ridge, Illinois, denied the Motion to Dismiss. Thereupon, the Petitioner included the same legal theory as stated in his Motion to Dismiss as part of his answer.

Upon conclusion of the evidence before the City of Park Ridge, Illinois Fire and Police Commission, the Commission found that the Petitioner had failed to meet the required traffic quota system for a period between April 1, 1980 and June 30, 1980, to which the three-day suspension related, since the Petitioner issued traffic citations equivalent to .59 per day for that period.

Because of its finding, the City of Park Ridge, Illinois Fire and Police Commission upheld the three-day suspension of the Petitioner.

Thereafter, the Petitioner filed a Complaint for Administrative Review contending that the requirement of issuing .80 traffic tickets per day constituted a traffic quota system and therefore was against public policy.

On November 23, 1981, the Honorable James C. Murray entered an order that the decision of the City of Park Ridge, Illinois Fire and Police Commission suspending the Petitioner for three days was to be reversed, since the suspension related to a traffic quota system which was against public policy.

Subsequently the Illinois Appellate Court reversed the Honorable James C. Murray with the concurring opinion holding that traffic quotas violated the Fourteenth Amendment by subjecting innocent motorists to traffic arrests without probable cause.

Thereafter, the Illinois Supreme Court granted a petition for leave and affirmed the Illinois Appellate Court without considering the issue as raised by the concurring opinion of the Illinois Appellate Court; that is, issuance of traffic tickets without probable cause violates due process of the Fourteenth Amendment of the United States Constitution.

REASONS FOR GRANTING THE WRIT

A TRAFFIC TICKET QUOTA SYSTEM VIOLATES THE FOURTEENTH AMENDMENT DUE PROCESS CLAUSE IN THAT IT SUBJECTS INNOCENT MOTORISTS TO THE ISSUANCE OF TRAFFIC CITATIONS WITHOUT PROBABLE CAUSE.

In its opinion, the Illinois Supreme Court holds that, since none of the petitioner's witnesses at the administrative hearing had testified that the .80 standard of required traffic tickets was not unreasonable or an arbitrary standard, the standard of the City of Park Ridge, Illinois requiring .80 traffic tickets per day was therefore a reasonable and an acceptable standard.

However, in its opinion, the Illinois Supreme Court totally disregarded the issue raised by the concurring opinion of the Illinois Appellate Court which asserted that, although an administrative rule or regulation may survive the test of reasonableness, nevertheless such a standard cannot be upheld if it violates a public interest or public policy concern.

In this instance, the concurring opinion viewed the traffic quota as an objectionable standard, since it subjects innocent motorists to the issuance of traffic citations without probable cause.

That the Illinois Supreme Court totally ignored that issue as raised by the concurring opinion of the Illinois Appellate Court is evidenced by its only reference to that concurring opinion when the Court states (Appendix C, page 11a):

> One justice, in what is labeled a special concurrence, believed that "the case should be remanded to the circuit court for a determination of whether

> there (was a) sufficient basis for suspension of (appellant) without regard to (appellant's) failure to satisfy the requirements of the traffic ticket quota system." 110 Ill. App. 3d 941, 947 (Johnson, P.J., specially concurring).

After referring to the concurring opinion in the manner that it had, the Illinois Supreme Court did not further comment on that aspect of the issue as raised by the petitioner and addressed by the concurring opinion.

In the testimony as previously quoted in this Writ of certain police officers of the City of Park Ridge, Illinois, including that of the petitioner, it is quite apparent that the requirement of writing .80 traffic citations per day is a mandatory requirement that is required by the City of Park Ridge, Illinois.

Such a mandatory traffic citation requirement is against public policy and has been recognized as such by the Pennsylvania legislature when, in 1981, it enacted a law, No. 1981-114, which prohibited "political subdivisions or agencies" from "imposing certain quotas on the issuance of citations for certain offenses."

The Pennsylvania Statute, No. 1981-114, states:

1. No political subdivision or agency of the Commonwealth shall have the power or authority to order, mandate, require or in any other manner, directly or indirectly, suggest to any *police officer, State Police Officers,* game commission officer, fish commission officer or any other officer employed by such political subdivision or agency of the Commonwealth that said *police officer, State Police Officer,* game commission officer, fish commission officer or any other officer shall issue a certain number of *traffic citations, tickets or any other type of citation on any daily, weekly, monthly, quarterly or yearly basis.* (emphasis added)

2. Any tickets issued in violation of this act shall be unenforceable, null and void.

The significance of the Pennsylvania Statute is that the "quotas" to which it refers include traffic citations and that it does not matter whether such "quotas" include less than one ticket per day, since quotas are considered inherently wrong.

In the analysis of the Pennsylvania Statute, not only are traffic quotas inherently wrong from the standpoint that innocent motorists are subjected to traffic citations without probable cause, but that a police officer is deprived of the discretion to issue a traffic citation, which discretion is recognized as being vital under Illinois law. *People v. Patterson*, 88 Ill.App.3d 144 (1980); *Collins v. Board of Fire and Police Commissioners*, 84 Ill.App.3d 516 (1980).

Discretionary authority is necessary to insure that the law is enforced in a fundamentally fair and objective manner.

In this instance, by removing the discretion from the petitioner via the mandatory traffic ticket requirement of issuing .80 tickets per day, such removal of discretionary authority prevents police officers, such as the petitioner, from enforcing the law in a fundamentally fair and objective manner.

Certainly, punishing the petitioner via a three-day suspension constitutes a removal of discretion since it discourages police officers from exercising discretionary authority which is subject to punishment.

Furthermore, according to the testimony of the Park Ridge, Illinois police officers, the mandatory traffic requirement of .80 citations per day as being correlated to performance evaluations is in effect to "build" an officer's activity record.

Such mandatory traffic requirement is contrary to the Amici brief that had been filed on behalf of the City of Park Ridge, Illinois, in the Illinois Supreme Court, when in their brief they had stated:

> ". . . the enforcement of traffic laws for the sole purpose of building an activity record is as repugnant as enforcement for revenue purposes."

Because the traffic quota system of the City of Park Ridge, Illinois is a mandatory system of writing .80 tickets per day, because that mandatory traffic system in effect removes discretionary authority from the police officers relating to the issuance of traffic citations, because that traffic quota system penalizes the police officer for failure to meet that quota as evidenced by the three-day suspension of the petitioner, because that traffic quota system is nothing more than an activity record builder, such a traffic quota system violates public policy, since it subjects innocent motorists to the issuance of traffic tickets without probable cause.

As the petitioner had orally argued before the Supreme Court of Illinois, the intended end of less accidents does not justify the traffic quota system as a means, since the means are against public policy pursuant to the observations noted from the testimony of another City of Park Ridge, Illinois police officer not previously quoted in this Writ of Certiorari, which testimony was elicited at the administrative hearing of the petitioner:

Direct Examination of William F. Motisi.

Q. Are you familiar with the so-called traffic point system of this Police Department?
A. Yes, sir, I am.
Q. How many traffic citations must you issue per day?
A. Eighty percent of one.
Q. Is this required by your department?

A. Yes, sir, it is.

Q. And if you do not fulfill that requirement, what happens, if anything?

A. You may get a letter or a reprimand from your supervisor that you're behind in writing tickets.

Q. Do you feel that this ticket point system is a quota system?

A. Yes, sir, I do.

Q. And how do you define the quota system?

A. *Without any—okay. Without any excuses at all, you must write a minimum number of that many tickets, point eight per day, 80 percent of one ticket per day, no excuses, nothing can be given. You're supposed to do that.* (emphasis added)

Therefore, the traffic ticket quota system, herein, as an illegal means, cannot be justified by a legal end.

Ironically, in this instance, the means as exercised, herein, specifically the traffic quota system, did not establish the end of achieving less accidents, since it was not proven by the respondent that the traffic quota system in effect achieved that end as is substantiated by the following quotation from the opinion of the Illinois Supreme Court (Appendix C, pages 16a-17a):

> "During oral argument before this court, the appellant argued that the means (the traffic index) that the city instituted to achieve the ends (less accidents) were not only against public policy, but were also unsuccessful. However, as the appellate court noted, there was no conclusive evidence presented to show that the traffic-index standard had not reduced the number of accidents. Captain Baudek did testify that the number of accidents had increased but so, too had the traffic count. Lieutenant Teune testified that since the index was instituted there had been a reduction in the number of accidents. This testimony is inconclusive in establishing the effectiveness of the regulation."

CONCLUSION

For reasons enumerated herein, the writ should be granted.

Respectfully submitted,

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APPENDIX A

IN THE
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

RICHARD BEGG,

Plaintiff,

v.

BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF PARK RIDGE, ILLINOIS,

Defendant.

No. 81 L 2184

ORDER

After reviewing the pleadings and briefs and transcript of proceedings before the Board of Fire and Police Commissioners of the City of Park Ridge, Illinois, and the Court having jurisdiction over the subject matter and parties:

It is hereby ordered that decision of the City of Park Ridge, Illinois Fire and Police Commission suspending the Plaintiff for 3 days is reversed in that Plaintiff was suspended on the basis of a traffic quota system which is against public policy.

There is no just reason for delay of the enforcement of this final order.

JUDGE JAMES C. MURRAY
NOV. 23, 1981
CIRCUIT COURT

APPENDIX B

Opinion Of The Appellate Court Of Illinois
First District, Fourth Division
No. 81-3114 — Filed November 24, 1982

CITY OF PARK RIDGE, ILLINOIS,

Defendant-Appellant,

v.

RICHARD R. BEGG,

Plaintiff-Appellee.

Appeal From The Circuit Court Of Cook County
Honorable James C. Murray, Presiding

JUSTICE ROMITI delivered the opinion of the court:

Plaintiff Richard Begg, a police officer with the city of Park Ridge, was suspended without pay for three days by order of the city's director of public safety because he failed to meet certain job performance standards relating to the number of traffic tickets he issued and the number of non-traffic activities he performed. That order was affirmed following an evidentiary hearing before the Park Ridge Fire and Police Commission. However, plaintiff then filed an administrative review action and the circuit court of Cook County reversed the Commission, finding that plaintiff was suspended on the basis of a traffic quota system which was against public policy. On appeal to this court defendants contend that the circuit court's finding was not supported by the record.

We reverse.

At the hearing before the Fire and Police Commission the following pertinent evidence was adduced. In December 1977, Captain John Baudek, commander of the field operations bureau of the city's police department, issued an order setting traffic enforcement standards for patrol officers. The order stated, *inter alia*, that:

> "[w]ith the number of miles that a patrol officer drives during a watch and the high volume of traffic in the Park Ridge area * * * it is reasonable for an officer to observe one traffic violation during a watch. Keeping in mind the midnight watch and other consideration [*sic*], a patrol officer will be expected to issue .80 [traffic] citations per day of patrol over a standard three-month watch cycle."

The order noted that the standard was below that presently performed by many officers. Baudek also stated in the order:

> "While a deviation below the standard does not automatically mean the officer is below an acceptable level of performance, I would expect his supervisor to be able to explain such a deviation if the officer is given an acceptable rating in that area of performance on his evaluation."

In his testimony at the hearing Baudek explained that his purpose in issuing the order was to set standards which were quantifiable and measurable rather than having totally subjective personal opinion standards of evaluation. Another reason for setting the standards was to reduce the number of accidents. On this latter point he testified that the number of accidents in Park Ridge had increased since the standard was set, but also stated that the traffic count had also increased in that period. According to Baudek the traffic citation standards were required to be met unless there were extenuating circumstances.

Baudek also testified that there existed a second category of activities used to judge the officers. These activities included non-traffic violations and such tasks as checking doors at the homes of vacationing residents of Park Ridge. There was no set standard established for

this category but supervisors were told what the averages were for each watch and department. According to Baudek these two categories constituted only one small part of the overall evaluation of the officers. Evaluation forms were completed by the officer's watch commander.

Lieutenant George Teune, plaintiff's watch commander, testified that those evaluation forms included matters such as the officer's initiative, promptness, and the amount of sick time he used in addition to the two categories of objective performance statistics. He estimated that those two categories counted for forty to fifty percent of the evaluation. It was his opinion that establishing the objective standards had reduced the number of accidents in Park Ridge. He also noted that another purpose of those standards was to establish a norm from which superior performance could be identified. He conceded that those standards amounted to a quota system.

In an order issued April 24, 1980, plaintiff was warned that his performance on the police department was not at an acceptable level. He had used an unacceptable amount of sick time and had been suspended for one day earlier that year for the misuse of sick time. His traffic index score for 1979 was .40. His score in that category for the first quarter of 1980 was .15, the lowest in the department and well below the departmental average of .829. His score for non-traffic activities for 1979 was .76, while the departmental average for that period was 1.75. His first-quarter 1980 score for that index was .99, while the departmental average was 1.50. Plaintiff was informed in the order that for the second quarter of 1980 he had to achieve traffic index and non-traffic index scores of .80 and 1.50 repsectively. He was also instructed to reduce his sick time usage, barring serious illness or injury, not to do anything requiring disciplinary action to be taken against him, and to obtain a departmental physical exam. (It is conceded that he met the latter three requirements.)

It was established without contradiction at the hearing that plaintiff failed to meet the index requirements for

the second quarter of 1980. His traffic index average was .59 while the departmental average was .92 and his watch's average was also .92. His non-traffic index average was .97 while his watch's average was .186 and that of the department was 1.66. Accordingly, a letter of reprimand was issued and he was suspended without pay for three days.

Plaintiff testified that he was in his 18th year with the Park Ridge police force. It was his opinion that the index requirements constituted a quota and that 90 percent of the evaluation of officers was based on fulfillment of those index requirements. He stated that the indexes did not reflect all that he did, such as referring young drivers to their parents rather than issuing citations to them the first time. He had issued only one traffic ticket in 21 days in April because he saw none others that were "of a hazardous nature that would require a ticket." He gave as an example of such a non-hazardous violation a rolling stop with no traffic present. He conceded that in May he made a special attempt to bring up his traffic index; that month his traffic index was 1.80. According to plaintiff the highest volume activity performed by officers in relation to their non-traffic activity index was checking on vacant homes. He testified that he had seen officers marking down the time, date, location and condition of homes before they went on patrol; however, he could not recall the names of the officers he saw doing this. Plaintiff called as witnesses a number of Park Ridge police officers who testified that they considered the index requirements to be quotas and who believed that fulfillment of those quotas constituted the most important part of their evaluations. Several officers also testified that they had observed other officers noting in police records that they had checked vacant houses before they even went on patrol; however none of the officers testified that those homes were in fact not subsequently checked.

Based on this evidence the Fire and Police Commission found that plaintiff had not met the required performance standards for traffic citations and non-traffic activities and

further found that he had not established any mitigating circumstances sufficient to excuse his performance below those standards. Accordingly, his three-day suspension without pay was affirmed. The sole basis for the circuit court's reversal of this decision was its finding that plaintiff was suspended on the basis of a traffic quota system which was against public policy.

The sole issue before us is the validity of the circuit court's determination that the city of Park Ridge could not require plaintiff to meet the standards at issue. In determining this issue we note that administrative regulations, like statutes, are presumptively valid and one attacking such regulations has the burden of establishing their invalidity. (*Midwest Petroleum Marketers Association v. City of Chicago* (1980), 82 Ill. App. 3d 494, 402 N.E.2d 709.) Moreover, such regulations will be set aside by a reviewing court only if they are found to be clearly arbitrary, capricious or unreasonable. *Illinois Coal Operators Association v. Pollution Control Board* (1974), 59 Ill. 2d 305, 319 N.E.2d 782; *Shell Oil Co. v. Pollution Control Board* (1976), 37 Ill. App. 3d 264, 346 N.E.2d 212.

Plaintiff's central challenge to the regulations at issue appears to be that they establish an absolute quota to be met by the police officers and that such quota systems are *per se* against public policy. For that proposition plaintiff cites *People v. Patterson* (1980), 88 Ill. App. 3d 144, 410 N.E.2d 223, and *Bodenschatz v. State Personnel Board* (1971), 15 Cal. App. 3d 775, 93 Cal. Rptr. 471. But neither of those cases even involved quota systems. In *Patterson*, despite uncontradicted testimony from a police officer that the defendant was initially stopped for speeding, the trial court had suppressed evidence discovered as the result of that stop on the ground that the officer lacked probable cause for the stop. In reversing that holding the appellate court noted that the fact the motorist was not charged by the officer with speeding but was only issued a warning did not justify the circuit court's disbelief of the officer. The court noted that an officer may always issue a warning or reprimand without citing a

motorist. We find nothing in that statement of the discretion invested in a police officer to support the proposition that the regulation at issue here is against public policy. Nothing in the record indicates that plaintiff was not free to exercise his discretion in a similar manner in any individual case. In *Bodenschatz*, a police officer was dismissed because his enforcement activity was well below the average for his fellow officers. The officer challenged his dismissal in part because he contended that his level of activity was low only because the police department had a policy of requiring its officers to engage in more enforcement activity than circumstances warranted. The appellate court agreed that such a policy would be improper as contrary to the public interest but noted that the officer had failed to meet his burden of proving that such a policy was in existence. In this cause there was no evidence to suggest that plaintiff was being asked to meet standards which were unreasonably high. Nor was there any testimony that other police officers or the plaintiff would have had to issue unjustified citations to meet the standards.

Plaintiff contends that the traffic index requirement was improper because it had not resulted in reducing accidents in Park Ridge, one of the stated goals set for it. But no such evidence was presented at the hearing. Captain Baudek conceded that the number of accidents had increased, but he also testified that traffic had also increased. Lieutenant Teune specifically testified that he believed establishing objective standards had reduced the number of accidents in Park Ridge. Moreover, there were other stated goals intended to be achieved by these objective standards. They provided a means of evaluating officers in terms of minimal performance as well as identifying superior performance.

Finally plaintiff contends that too much emphasis was placed on the objective standards rather than overall police performance. However, Captain Baudek testified that the two objective categories were only a small part of the evaluation of officers. Lieutenant Teune estimated

that the objective standards comprised less than half of the total evaluation. The Commission was free to accept these lesser estimates as opposed to the greater percentages testified to by plaintiff's witnesses who of course did not conduct the evaluations. Furthermore plaintiff has failed to demonstrate that even great reliance on such objective standards would be unreasonable.

Clearly plaintiff failed to meet his burden of establishing that the challenged regulations were arbitrary or unreasonable.

For the foregoing reasons, the judgment of the circuit court of Cook County is reversed.

LINN, J., concurs.

PRESIDING JUSTICE JOHNSON, specially concurring:

I concur with the result reached by the majority that the judgment of the circuit court must be reversed. The effect of this decision is to restore plaintiff to his original position. I believe, however, that the case should be remanded to the circuit court for a determination of whether there is sufficient basis for suspension of plaintiff without regard to plaintiff's failure to satisfy the requirements of the traffic ticket quota system.

The cases cited by defendants in support of their position, with the exception of *Bodenschatz v. State Personnel Board* (1971), 93 Cal. Rptr. 471, 15 Cal. App. 3d 775, deal with the administrative regulations as such and not with the problems of traffic ticket quota systems, which raise questions of a different nature. In *Bodenschatz,* the administrative regulation in question had a quantity requirement as does the regulation in this case. However, in *Bodenschatz,* the overriding function of the administrative regulation was traffic law enforcement and not a straight numerical requirement such as is present in this case.

In the instant case, the circuit court held that traffic ticket quota systems are "against public policy" and set aside the decision of the Park Ridge Fire and Police Com-

mission suspending plaintiff. The majority here did, indeed, subject the Park Ridge traffic ticket quota system to judicial scrutiny, but, in so doing, applied the usual test for a judicial examination of the validity of administrative regulations. That test is (1) presume the regulation to be valid and (2) invalidate it only if it is arbitrary and unreasonable. By applying this test mechanically to this situation, the majority ignores serious public policy objections to a traffic ticket quota system. Although I agree in general that the "arbitrary and unreasonable" test is appropriate for cases involving the validity of administrative regulations, when a regulation requires a police officer to charge members of the public with a certain number of quasi-criminal infractions per day, far more serious questions are raised. It is no longer simply a question of whether the statute is arbitrary and unreasonable. For example, if it could be shown statistically that an increased issuance of traffic tickets reduces traffic accidents, then the quota system would arguably survive the arbitrary and unreasonable test applied by the majority to the quota system in this case. Nonetheless, if a police officer, to keep his job, to get promoted and/or to gain favor with his superiors, issues traffic tickets to innocent people, serious public policy concerns arise. Public policy, of course, is a vague notion encompassing many different ideas. Due process under both the Federal and State constitutions requires officers of the State to act in a fundamentally fair and objective manner. A traffic ticket quota system interjects an extraneous and irrelevant, yet personally important, factor into the decision-making process. The real question should be whether the police officer had reasonable grounds to believe that a traffic ordinance had been violated—not how many tickets the officer must issue that month in order to retain his job.

In my opinion, this court correctly reversed the decision of the circuit court, but we should remand the case to the trial court to determine whether the decision of the Park Ridge Fire and Police Commission can be upheld without regard to the quota system.

APPENDIX C

Docket No. 57721—Agenda 22—September 1983.

RICHARD BEGG, Appellant, v. BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF PARK RIDGE, *et al.*, Appellee.

JUSTICE CLARK delivered the opinion of the court:

In this case the appellant, Richard R. Begg, a police officer with the city of Park Ridge, was suspended without pay for three days for allegedly failing to meet certain job performance requirements or standards relating to his traffic and nontraffic activities as a police officer. The city's director of public safety ordered the suspension, and that order was affirmed by the Fire and Police Commission after an evidentiary hearing. The appellant then filed an administrative review action in the circuit court of Cook County. The circuit court reversed the commission because it found that appellant was suspended based on a traffic quota system which it held was against public policy. The appellate court, one justice specially concurring, reversed. (110 Ill. App. 3d 941.) The majority of the appellate court held that there was no evidence to suggest that the appellant was being asked to meet standards which were unreasonably high, nor was there any testimony that the appellant or other officers were to issue unjustified citations to meet the standards required of them. (110 Ill. App. 3d 941, 946.) The appellate court further held that the standards provided a means of evaluating officers in terms of minimal performance as well as identifying superior performance and that appellant had failed to demonstrate that even great reliance on such objective standards would be unreasonable. The court held: "Clearly plaintiff [appellant] has failed to meet his burden of establishing that the challenged regulations were arbitrary or unreasonable." 110 Ill. App. 3d 941, 946.

One justice, in what is labeled a special concurrence, believed that "the case should be remanded to the circuit court for a determination of whether there [was a] sufficient basis for suspension of [appellant] without regard to [appellant's] failure to satisfy the requirements of the traffic ticket quota system." 110 Ill. App. 3d 941, 947 (Johnson, P.J., specially concurring).

The appellant filed a petition for leave to appeal in this court, and we granted his petition under our Rule 315 (87 Ill. 2d R. 315). We also granted leave to Americans for Effective Law Enforcement, Inc., the Illinois Association of Chiefs of Police, Inc., and the International Association of Chiefs of Police, Inc. to file a joint brief *amicus curiae* in support of the city of Park Ridge and to the Grand Lodge of the Fraternal Order of Police, who filed a brief *amicus curiae* on behalf of appellant.

At the evidentiary hearing before the Fire and Police Commission the following evidence was adduced: Captain John Baudek, commander of the field operations bureau of the city's police department, issued an order on December 19, 1977, setting certain traffic enforcement standards for patrol officers. The order provided in pertinent part:

> "In Park Ridge in 1976, there were over twenty-one hundred motor vehicle accidents and it appears that the number in 1977 will reach or exceed that number.
>
> * * *
>
> . . . a commitment to reducing motor vehicle accidents and the injuries, deaths, and sorrow that accompany them should be a major objective of both the department's administration and officers.
>
> * * *
>
> I believe that the standard detailed below is reasonable considering the numerous other tasks that a patrol officer in Park Ridge must perform. The standard gives both the patrol officer and his supervisors one quantifiable reference point for performance and productivity. It should be pointed out that the stand-

ard given is below the standard presently performed by many officers.

While a deviation below the standard does not automatically mean the officer is below an acceptable level of performance, I would expect his supervisor to be able to explain such a deviation if the officer is given an acceptable rating in that area of performance on his evaluation. The standard for traffic enforcement will be as follows:

With the number of miles that a patrol officer drives during a watch and the high volume of traffic in the Park Ridge area, I believe that it is reasonable for an officer to observe one traffic violation during a watch. Keeping in mind the midnight watch and other consideration[s], a patrol officer will be expected to issue .80 "X" citations per day of patrol over a standard three-month watch cycle."

Baudek testified at the evidentiary hearing before the Fire and Police Commission. He stated that his purpose in issuing the above order was to decrease the number of traffic accidents in Park Ridge. He testified that, since he had issued the order, the number of accidents in Park Ridge had not decreased. But he also stated that the traffic count had increased, a fact which might account for the rise in the number of accidents. The standard was also used as a quantifiable and measurable basis upon which to evaluate the police department's officers. Baudek testified that it provided a measurable standard on which to judge an officer's performance rather than depending solely on a subjective personal opinion of a supervisor.

Baudek explained that an officer was evaluated in three ways. The traffic activities that were discussed in the order were one way, nontraffic activities were the second way, and the subjective evaluation by an officer's watch commander was the third way. In the nontraffic activities category, Baudek testified, an officer was expected to perform such tasks as checking doors of the homes of vacationing residents and schools. Even though there was no

set standard for nontraffic activities, supervisors were given averages for each department and watch and were expected to use that average as a basis for comparison. Baudek testified that the traffic and nontraffic activities of a police officer were only a small part of the officer's overall evaluation. An officer's watch commander was responsible for completing his or her evaluation form.

Lieutenant George Teune, the appellant's watch commander, was responsible for evaluating the appellant. At the hearing, Teune testified that the evaluation forms included the two objective performance statistics for traffic and nontraffic activities in addition to other areas of evaluation such as the officer's amount of initiative, promptness, and the amount of sick time he used. Teune testified that the nontraffic and traffic categories, objective categories, represented 40% to 50% of the overall evaluation of the officer. Teune, contrary to what Captain Baudek had testified, stated, that, since the standard (which he believed amounted to a quota system) was instituted, the number of accidents in Park Ridge had decreased. He also testified that the standards established a norm from which an officer's superior performance could be judged.

On April 24, 1980, by order, the appellant was warned his performance as a police officer had fallen below an acceptable level. The appellant's sick time record was described as "if not the poorest on the department, very close to that level." His productivity levels were considered to be "in fact the lowest of any officer on the department by almost any standard used." Appellant's traffic index score was listed at .40 for 1979, and for the first quarter of 1980 it was .15, the lowest in the department and well below the departmental average of .829. In nontraffic activities, the appellant's nontraffic index score was listed at .76 for 1979, and .99 for the first quarter of 1980. The departmental averages for that same period were 1.75 and 1.50 respectively. Appellant was told that he had specific objectives to meet for the second quarter of 1980 or he would be subject to discipline. He

was to improve his traffic and nontraffic index scores, reduce his use of sick time (barring any serious illness), refrain from doing anything which would cause disciplinary action to be taken against him, and submit to a physical examination to be performed by a departmental physician. Appellant did fulfill the last three of these objectives. However, the evidence clearly established that he failed to meet the traffic and nontraffic standards which were set for the second quarter of 1980. A letter of reprimand was consequently issued and the appellant was suspended for three days without pay.

Appellant testified during the hearing to the following facts and opinions. He had been on the Park Ridge police force for 18 years. The index standards, in his opinion, constituted a quota system. He believed that 90% of an officer's evaluation was based on the traffic and nontraffic index standards. He did not believe that the indices were a true reflection of an officer's performance because they did not reflect certain activities an officer performed. Appellant gave the example of a situation where an officer would refer young drivers to their parents rather than give them a ticket if it was a first offense.

In April of 1980, appellant only issued one ticket in 21 days because he believed that the other infractions he had seen were not "of a hazardous nature that would require a ticket." A rolling stop with no traffic present was an example of this type of infraction. In May, the appellant's traffic index was 1.80. Appellant testified that, during that month he had made a special effort to improve his score.

Appellant stated that in the area of nontraffic activities, checking homes was the highest volume activity. Although he could not name the officers who did it, appellant stated that some officers marked down the time, date, location and condition of homes before they even checked them.

Several officers testified at the hearing expressing their belief that the index standards were in fact quotas and that their evaluations consisted mainly of their scores regarding the index standards. These officers also testified

to seeing other officers fill out the forms for recording house checks before they actually went out on patrol. None of the officers could testify that these homes were not subsequently checked.

As we mentioned previously, the Fire and Police Commission, based on the above evidence, found that, since appellant had failed to meet the required traffic and non-traffic indices and had not presented any mitigating circumstances which would excuse his unacceptable performance, his suspension for three days without pay was proper. The circuit court of Cook County reversed the commission's decision based solely on the fact that it found the traffic index standard to be a traffic quota system which it held was against public policy. The appellate court reversed the decision of the circuit court because it held that appellant had failed to sustain his burden of proof to establish that the traffic index standard was arbitrary or unreasonable.

Appellant does not challenge the right of the city of Park Ridge to enforce its traffic laws. However, he does argue that by requiring police officers to meet certain standards of enforcement, the city is violating public policy and issuing an unreasonable, arbitrary and capricious rule. In *Midwest Petroleum Marketers Association v. City of Chicago* (1980), 82 Ill. App. 3d 494, the court held:

> "To constitute a legitimate exercise of the police power, municipal legislation must bear a reasonable relationship to the public interest intended to be protected, and the means adopted must be a reasonable method of accomplishing the desired objective." (82 Ill. App. 3d 494, 500.)

It also held that, "[o]nce the legislative body determines that a problem exists and acts to protect and promote the general welfare of its citizens, the legislation is presumed to be a valid exercise of the city's police power." 82 Ill. App. 3d 494, 500, citing *Union Cemetery Association v. Cooper* (1953), 414 Ill. 23.

Administrative regulations, for purposes of determining their validity, are presumed to be valid. (*Du-Mont Ventilating Co. v. Department of Revenue* (1978), 73 Ill. 2d 243.) An administrative regulation will not be set aside unless it has been clearly arbitrary, unreasonable or capricious (*Illinois Coal Operators Association v. Pollution Control Board* (1974), 59 Ill. 2d 305, 310), and the person questioning the validity of the administrative regulation bears the burden of establishing its invalidity (*Illinois State Chamber of Commerce v. Pollution Control Board* (1977), 49 Ill. App. 3d 954, 960).

In the instant case, as was stated in Captain Baudek's order, the city of Park Ridge was faced with an increasing number of motor vehicle accidents. In response to this situation, it issued an order which was meant to reduce motor vehicle accidents, injuries and deaths, by requiring police officers to perform at a certain level in their traffic enforcement activities. This regulation is presumed to be valid and we will not set it aside unless it is shown to be arbitrary, unreasonable or capricious. The appellant has the burden of establishing the regulation's invalidity, since he is the one who is challenging its validity.

Appellant did not present any evidence to demonstrate that the traffic index standard was unreasonable. Neither the appellant nor any other officer testified that he was forced to issue more tickets than were justified in order to meet the traffic-index standard. None of them testified that the .80 standard was an unreasonable or arbitrary standard.

During oral argument before this court, the appellant argued that the means (the traffic index) that the city instituted to achieve the ends (less accidents) were not only against public policy, but were also unsuccessful. However, as the appellate court noted, there was no conclusive evidence presented to show that the traffic-index standard had not reduced the number of accidents. Captain Baudek did testify that the number of accidents had increased but so, too, had the traffic count. Lieutenant Teune testified

that since the index was instituted there had been a reduction in the number of accidents. This testimony is inconclusive in establishing the effectiveness of the regulation.

In its *amicus curiae* brief, filed on behalf of the city, Americans for Effective Law Enforcement, Inc., asserted that standards such as the one set in the instant case not only serve to reduce traffic accidents, but also provide a necessary means by which a police department can maintain structure and control over its police officers. It asserted that administrative rulemaking is necessary to assure uniformity in the enforcement of laws in addition to fulfilling the department's need for accountability over its officers.

Appellant contends that the traffic-index standard plays too big a role in the overall evaluation of an officer. Captain Baudek and Lieutenant Teune both testified that the traffic and nontraffic indices were less than 50% of an officer's overall evaluation. The two objective categories were used to make the evaluation less arbitrary. An officer was no longer evaluated solely on the basis of a watch commander's personal opinion. The appellant failed to show that reliance upon these standards in evaluating officers was unreasonable or arbitrary.

Any regulation can be abused by those persons responsible for its enforcement; however, that does not mean that the regulation itself is invalid or against public policy. As we stated earlier in this opinion, the appellant had the burden of establishing that the regulation was arbitrary and unreasonable. He failed to meet that burden.

Accordingly, we affirm the judgment of the appellate court, which reversed the judgment of the circuit court.

Judgment affirmed.